

FCC MAIL SECTION

Federal Communications Commission

DA 96-947

JUN 25 11 20 AM '96

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.606(b),)	MM Docket No. 96-136
Table of Allotments,)	RM-8816
TV Broadcast Stations.)	
(Mililani Town, ¹ Hawaii))	

NOTICE OF PROPOSED RULE MAKING

Adopted: June 14, 1996

Released: June 21, 1996

Comment Date: August 12, 1996

Reply Comment Date: August 27, 1996

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by James Boersema ("petitioner") requesting the allotment of UHF television Channel 60 to Mililani Town, Hawaii, as that community's first local television service. Petitioner stated his intention to apply for Channel 60 if it is allotted to the community, as requested.²

¹We are unable to locate any information regarding "Mililani", Hawaii, in official reference sources. However, "Mililani Town" is identified as a census designated place ("CDP") in the 1990 U.S. Census, and is identified in the Rand McNally Commercial Atlas. Therefore, in the interest of administrative efficiency, although we shall proceed with the issuance of this *Notice* based on the assumption that petitioner intends to serve the needs and interests of Mililani Town rather than Mililani, he is requested to clarify the discrepancy in responsive comments, and state his intention to apply for Channel 60 if it is ultimately allotted to Mililani Town. Failure to respond fully to our request for additional information could result in a denial of the proposal.

²Although the petitioner's request was signed and his address stated, he failed to include an affidavit verifying that the statements contained in the petition are accurate to the best of his knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. See also *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911-3919, n.41 (1990). Petitioner is requested to rectify the omission in his comments.

2. Mililani Town (population 29,359), in Honolulu County (population 632,603),³ is located in the central portion of Oahu Island, Hawaii. Petitioner notes that the community is a census designated place. Further, petitioner reports that the community has a post office, banking establishments, a police department, educational facilities, a community center, and shopping outlets.

3. A staff review of the proposal reveals that UHF television Channel 60 can be allotted to Mililani Town, Hawaii, in conformity with the minimum distance separation requirements of Sections 73.610 and 73.698 of the Commission's Rules without the imposition of a site restriction, utilizing coordinates at 21-27-29 North Latitude and 158-01-04 West Longitude. Additionally, although the Commission has imposed a temporary freeze on new television allotments in certain metropolitan areas, the proposed allotment of Channel 60 to Mililani Town is not affected thereby. See *Notice of Inquiry*, 2 FCC Rcd 2125 (1987) and *Order*, 52 FR 28346, July 29, 1987.

4. As the requested allotment could provide a first local television transmission service to Mililani Town, we believe it would serve the public interest to solicit comments on the proposal to allot UHF television Channel 60 to that locality. Therefore, we will seek comments on the proposed amendment to the TV Table of Allotments, Section 73.606(b) of the Commission's Rules with respect to Mililani Town, as follows:

<u>City</u>		<u>Channel No.</u>
	<u>Present</u>	<u>Proposed</u>
Mililani Town, Hawaii	--	60

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before August 12, 1996, and reply comments on or before August 27, 1996, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

James Boersema
733 Bishop Street #170-460
Honolulu, HI 96813

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules. 46 FR 11549, February 9, 1981.

³Population figures were taken from the 1990 U.S. Census

8. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239), at its headquarters, 1919 M Street, N.W., Washington, D.C.